



1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833
(800) 541-4591 Fax (916) 244-1199
<https://www.planjpa.org/>

**CLAIMS COMMITTEE MEETING
AGENDA**

**Thursday, August 26, 2021
1:30 p.m.**

Zoom

Please Contact Katie Sullivan for Videoconference Information

All portions of this meeting will be conducted by teleconferencing in accordance with the State of California Executive Order N-29-20.

Members of the public may observe and listen to the meeting telephonically. No physical location will be available from which members of the public may observe the meeting and offer public comment. Public comments may be submitted in advance of the meeting by emailing Katie Sullivan at katie.sullivan@sedgwick.com no later than 5 p.m. on Wednesday, August 25, 2021. If a member of the public would like to address the Claims Committee during the meeting, the person may email Ms. Sullivan during the meeting and, if timely received, Ms. Sullivan will read or summarize the email to the Board members.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Katie Sullivan at (916) 244-1164 or katie.sullivan@sedgwick.com (email). Requests must be made as early as possible, and at least one full business day before the start of the meeting.

Documents and materials relating to an open session agenda item that are provided to the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA) Claims Committee less than 72 hours prior to a regular meeting will be available for public inspection at 1750 Creekside Oaks Dr., Suite 200, Sacramento, CA 95833.

- Page**
- 1. CALL TO ORDER**
 - 2. INTRODUCTIONS**
 - 3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)**

- Page** **4. PUBLIC COMMENTS** - The Public may submit any questions in advance of the meeting by contacting Katie Sullivan at: katie.sullivan@sedgwick.com. This time is reserved for members of the public to address the Committee relative to matters of the Claims Committee not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total.
- 5. CONSENT CALENDAR**
If a Committee member would like to discuss any item listed, it may be pulled from the Consent Calendar.
- 5** *A. Minutes from the July 29, 2021, Claims Committee Meeting
Recommendation: Staff recommends the Committee approve the Consent Calendar.
- 6. CLAIMS MATTERS**
- 8** *A. Sedgwick Third Party Administrator Management of Restitution and Small Claims Court Representation
Recommendation: Staff recommends Claims Committee provide direction to help define the scope of Third Party Administrator services with respect to restitution.
- 27** *B. Consideration of Settlement Authority for Property Claims
Recommendation: Staff recommends the Claims Committee provide settlement authority for property claims as follows: Litigation Management \$200,000 and Sedgwick Third Party Adjusters \$50,000 in excess of PLAN JPA member's deductible.
- 40** *C. Consideration of Sedgwick Liability Case Nurse Consultation Program
Recommendation: Staff recommends Claims Committee authorize an internal referral basis as a claim-claim referral operation under the existing Sedgwick liability Third Party Administrator contract.
- 7. CLOSED SESSION**
- A. Pursuant to Government Code Section 54956.95(a), the Committee will hold a closed session to discuss the following claims:
- Garcia, John and Mary v. Town of Atherton
 - Moore, Kathleen v. City of Suisun City
- B. Pursuant to Government Code Section 54957.1, the Committee will report in open session any reportable action taken in closed session.
- 8. CLOSING COMMENTS**
This time is reserved for comments by Claims Committee members and/or staff and to identify matters for future Claims Committee business.
- A. Claims Committee
- B. Staff

* Reference materials enclosed with staff report.

9. ADJOURNMENT

NOTICES:

- The next Claims Committee meeting will be held on September 23, 2021, at 1:30 p.m. via videoconference.

August 26, 2021

Agenda Items 5.A.

CONSENT CALENDAR

SUBJECT: Consent Calendar

BACKGROUND AND HISTORY:

The Consent Calendar consists of items that require approval or acceptance but are self-explanatory and require no discussion. If a Committee member would like to discuss any item listed, it may be pulled from the Consent Calendar.

STAFF RECOMMENDATION:

Staff recommends the Committee approve the Consent Calendar.

REFERENCE MATERIALS ATTACHED:

A. Minutes from the July 29, 2021, Claims Committee Meeting

**POOLED LIABILITY ASSURANCE NETWORK JOINT
POWERS AUTHORITY
(PLAN JPA)**

**MINUTES OF THE CLAIMS COMMITTEE
MEETING OF JULY 29, 2021**

A regular meeting of the Claims Committee was held on July 29, 2021, via videoconference.

MEMBERS PRESENT: Donald Larkin, Chair, Morgan Hill
Michael Guina, Burlingame
Ann Ritzma, Hillsborough
Marc Zafferano, San Bruno
Rebecca Mendenhall, San Carlos

MEMBERS ABSENT: Robert Schultz, Los Gatos

OTHERS PRESENT: Katie Sullivan, Assistant General Manager
Susan DeNardo, Litigation Manager
Greg Rubens, Board Counsel

1. CALL TO ORDER:

The Regular Meeting of the PLAN JPA Claims Committee meeting was called to order at 1:32 p.m.

2. INTRODUCTIONS:

A roll call was taken, and it was determined there was a quorum present.

3. APPROVAL OF THE AGENDA AS POSTED (OR AMENDED):

Marc Zafferano moved to approve the agenda as posted. Rebecca Mendenhall seconded the motion. A roll call vote was taken and the motion passed unanimously by Donald Larkin, Michael Guina, Ann Ritzma, Marc Zafferano, and Rebecca Mendenhall.

4. PUBLIC COMMENTS:

None.

5. CONSENT CALENDAR:

Ann Ritzma moved to approve the following items: A) Minutes from the May 27, 2021, Claims Committee Meeting. Rebecca Mendenhall seconded the motion. A roll call vote was taken, and the motion passed by majority vote by Donald Larkin, Michael Guina, Ann Ritzma, Marc Zafferano, and Rebecca Mendenhall.

6. CLAIMS MATTERS

A. Review of PRAXIS Audit Results

PLAN JPA sought out coverage from Public Risk Innovation, Solution, and Management (PRISM) to replace the potentially eroded \$5 million excess of \$25 million Arch Insurance layer for liability claims retroactively from July 1, 2020, through June 30, 2021. PRISM agreed to cover PLAN JPA members with the inception date of July 1, 2020.

To obtain coverage, part of the agreement with PRISM was for PLAN JPA to allow and audit of its open liability claims by PRISM. Tim Vincent, PRAXIS, reviewed 51 files and found that while PLAN JPA's claims were be handled appropriately, there were eight claims with noted areas needing improvement. The areas of improvement include timely and consistent reporting per PLAN JPA guidelines, proper documentation of file activity in file notes, proactive handling of claims to move claims to resolution, and timely response to management questions/direction.

Susan DeNardo, Litigation Manager, informed the Committee Jill Petrarca, Sedgwick Third Party Administrator (TPA) Lead, reviewed the audit results and has been meeting with examiners on a weekly basis to assist them in bringing their claims files current and within PLAN JPA standards.

B. Sedgwick Claims Administration Staffing Change

Ms. DeNardo informed the Committee Cynthia Gordon, Sedgwick TPA Team Lead, accepted another job opportunity and is no longer managing Sedgwick's examiners.

Ms. Petrarca is now serving as the interim Team Lead, bringing over 30 years in claims and management experience.

7. CLOSED SESSION:

A. The Committee convened to closed session, pursuant to Government Code section 54956.95(a) at 1:39 p.m. to discuss the following claims:

- Ng/Wu v. City of Burlingame
- Jain v. City of Milpitas
- Robbins v. City of San Bruno
- Awash/Khalif v. Town of Tiburon

B. Pursuant to Government Code Section 54957.1, the Committee reconvened to open session at 2:17 p.m. The following actions were taken under closed session:

No reportable action was taken during closed session.

8. CLOSING COMMENTS:

A. Claims Committee

None.

B. Staff

None.

9. ADJOURNMENT

The Regular Meeting of the PLAN JPA Claims Committee was adjourned at 2:18 p.m.



Katie Sullivan, Assistant General Manager

August 26, 2021

Agenda Items 6.A.

CLAIMS MATTERS

SUBJECT: Sedgwick Third Party Administrator Management of Restitution and Small Claims Court Representation

BACKGROUND AND HISTORY:

Sedgwick's Third Party Administrator (TPA) has contracted to provide claims administration services for PLAN JPA. Claims administration includes the adjustment, management and oversight of claims arising out of PLAN JPA's self-insured general liability, automobile, and property programs. The required tasks are identified in Exhibit A to the Agreement for General Liability/Automotive Liability/Property Liability Claims Administration Services and included in an flat annual rate for the services. These tasks include, but are not limited to, "[p]reserving subrogation rights and overseeing subrogation recovery as required".

Sedgwick TPA is requesting further definition as to the scope of their work with respect to members seeking restitution. Litigation Management will provide an idea of number of claims and members currently utilizing this service during the meeting.

STAFF RECOMMENDATION:

Staff recommends Claims Committee provide direction to help define the scope of Third Party Administrator services with respect to restitution.

REFERENCE MATERIALS ATTACHED:

- Agreement for General Liability/Automotive Liability/Property Liability Claims Administration Services
- Addendum to Extend the Agreement for An Additional Period



333 City Boulevard West, Suite 1500
Orange, CA 92868
www.yorkrsg.com

July 16, 2014

Jim Hill
ABAG PLAN Corporation
101 8th Street
Oakland, CA 94607

RECEIVED
JUL 17 2014

RE: Cover Letter for Signed Contract

ABAG PLANCORP.

Dear Mr. Hill,

Thank you so much for entrusting us with your claims administration program. We appreciate and are excited about the opportunity to partner with you. Please find enclosed two signed originals of the contract. Please return one signed original to us in the self-addressed envelope we have included with this package.

If any questions should arise, please contact Jon Lord at Jon.Lord@yorkrsg.com or via telephone at (949) 463-8502.

Sincerely,

Jody Gray
President, York Public Entity
E: Jody.Gray@yorkrsg.com
P: (714) 620-1336

7.17.2014

JEFF/SUSAN —

PLEASE RETURN CONTRACT FOR
OUR RECORDING & FILES .

FRANCES —

7-17-2014

Jon —

SIGNED CONTRACT ATTACHED.

**AGREEMENT FOR GENERAL LIABILITY/ AUTOMOTIVE LIABILITY/
PROPERTY LIABILITY CLAIMS ADMINISTRATION SERVICES**

This Agreement (the "Agreement") is effective as of the 1st day of August 2014 (the "Effective Date") between the **ABAG PLAN Corporation**, a nonprofit corporation, ("PRINCIPAL"), having offices at 101 8TH St. Oakland, CA 94607, and **YORK RISK SERVICES GROUP, INC.**, ("YORK"), a Corporation organized under the laws of the State of New York with its principal place of business at 99 Cherry Hill Road, Parsippany, New Jersey 07054.

WHEREAS, PRINCIPAL desires to retain YORK pursuant to the terms and provisions of this Agreement to provide Claims Administration Services on claims arising out of PRINCIPAL'S municipal self-insured GENERAL LIABILITY/ AUTOMOBILE LIABILITY/ PROPERTY pooling program (the "Plan Program") during the term of this Agreement; and

WHEREAS, PRINCIPAL names the ASSOCIATION OF BAY AREA GOVERNMENT (ABAG) its managing agent to oversee this agreement, and

WHEREAS, YORK desires to be retained by PRINCIPAL pursuant to the terms and provisions of this Agreement to provide Claims Administration Services on claims arising out of the Program during the term of this Agreement; and

WHEREAS, YORK, by entering into this Agreement, shall be obligated to provide Claims Administration Services to PRINCIPAL on the terms and conditions set forth herein;

NOW THEREFORE, for and in consideration of the promises set forth hereinabove, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, YORK and PRINCIPAL agree as follows:

I. DEFINITIONS

- A. "PRINCIPAL" shall mean ABAG PLAN Corporation.
- B. "ABAG" shall mean the Association of Bay Area Governments as agent of the Principal and administrator of the PLAN Program and of this Agreement for claims administrative services.
- C. "CLAIMS ADMINISTRATION SERVICES" shall include the administration, adjustment, management, and oversight of claims arising out of PRINCIPAL'S self-insured GENERAL LIABILITY, AUTOMOBILE and PROPERTY programs.

D. CLAIMS ADMINISTRATION SERVICES shall also include, but not limited to, the services contained in the Scope of Work provided in Exhibit A.

E. "CLAIMS" shall mean claims, arising under the PLAN Program and which are referred to YORK for adjusting during the term of this Agreement.

F. "INFORMATION" or "CONFIDENTIAL INFORMATION" shall mean documentation, data or information relevant to PRINCIPAL or claimant that is created by YORK or that comes into its possession as a result of the rendering of services by YORK to PRINCIPAL, pursuant to the Agreement.

G. "CONFIDENTIAL INFORMATION" is information not publicly available and includes, without limitation, the work product, investigation materials, trial preparation materials including but not limited to opinions and mental impressions of YORK personnel, communications with defense and coverage counsel and non-public personal information of insureds.

H. "LOSS ADJUSTMENT EXPENSE" shall mean, in addition to fees to be paid in accordance with items listed or inferred herein Agreement, all reasonable expenses necessary to the adjustment of a claim in accordance with this Agreement, including but not limited to, legal fees, court costs and fees for court reporters, expert witnesses, investigation, photocopies, subpoenas, photographs, maps, accounting, chemical or physical analysis, independent medical exams or other evaluations, depositions, appraisal fees and expenses, bill review, utilization review and any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss or subrogation actions. YORK may, but need not, elect to utilize its own staff to perform these services.

I. "SYSTEMS" shall mean severally or collectively, YORK's proprietary claims handling system.

J. "MEMBER" shall mean a municipal entity participating in the PLAN Program.

K. "PLAN Program" shall mean the self-funded municipal self-insurance pool created by PRINCIPAL, ABAG, and the participating cities and towns in the pool.

II. TERM OF AGREEMENT

The term of this Agreement shall commence on August 1, 2014 and shall continue until and through July 30, 2017 (the "Term"). This Agreement will be deemed extended to cover each additional claim that PRINCIPAL refers to YORK after the end of the aforesaid period (subject to the extensions as aforesaid) and which YORK accepts for handling.

III. CLAIMS ADMINISTRATION SERVICES (the "Services")

PRINCIPAL hereby retains YORK to provide Claims Administration Services, as set forth in this Agreement, including any Exhibit A attached hereto, for the Claims that arise out of the PLAN PROGRAM that are assigned via ABAG to YORK.

A. The Services to be rendered by YORK shall be in conformance with the requirements and provisions of this Agreement together with all applicable rules, orders, and interpretations issued by the applicable regulatory authorities as of the date hereof.

B. YORK acknowledges its obligation to comply with all applicable statutes and any rules or regulations of the applicable regulatory authorities.

C. YORK shall perform Claims Administration Services for each Claim assigned to it hereunder during the life of the claim.

D. YORK acknowledges that execution of this Agreement does not guarantee that YORK will be assigned any particular number of Claims.

IV. DUTIES OF YORK

A. YORK shall maintain sufficient staff with the necessary experience and management oversight. Adjusters assigned to Claims shall have a case load that allows proper attention to the work.

B. To the extent required by law, YORK shall utilize only licensed adjusters and licensed private investigators, where applicable and such adjusters and investigators shall in the rendering of their services conform to the provisions of all applicable laws, rules, orders, or written interpretations issued by the applicable regulatory authorities.

C. YORK shall investigate, evaluate, negotiate, settle, or deny Claims within the standing authority granted to YORK from time to time by ABAG. YORK may settle Claims in excess of its standing authority limits only with prior written approval of ABAG, which ABAG shall, in writing, promptly grant or deny upon York's request for authority.

D. Upon termination of the Agreement, all hard copy and electronic files will be transferred at PRINCIPAL'S expense.

E. YORK acknowledges that all of the Claims files in its possession are the property of PRINCIPAL and agrees to promptly provide access to or deliver any such file to PRINCIPAL, at PRINCIPAL'S reasonable expense, at any time upon PRINCIPAL'S request. In exchange for PRINCIPAL'S absolute right to obtain the Claims files, PRINCIPAL

agrees that it shall not have the right to set off any sums claimed due from YORK against fees due YORK under this Agreement.

F. YORK expressly agrees to hold all funds and assets of PRINCIPAL that come into its control or possession during the term of this Agreement as a fiduciary of PRINCIPAL in conjunction with direction from ABAG.

G. YORK shall make available, through YORK'S proprietary claims system, claim-related data with "web-enabled" access. PRINCIPAL, ABAG and MEMBERS will have "view only" access to the system. PRINCIPAL, ABAG and MEMBERS will bear their own hardware, software, connection and similar costs for accessing YORK'S electronic claims management system.

H. During the Term of this Agreement and at all times that there are open Claims being handled by YORK, YORK shall fully cooperate with PRINCIPAL, ABAG and Members, with ABAG retaining ultimate authority.

I. During the Term of this Agreement and thereafter until all Claims assigned hereunder are closed, YORK agrees to:

(1) Maintain in force a fidelity bond or equivalent insurance, such as Third Party Crime insurance, for the protection of PRINCIPAL, at a limit not less than one million dollars (\$1,000,000), to cover the risk of loss due to the wrongful conversion of any funds and assets of PRINCIPAL by YORK or its employees or independent contractors during the term of this Agreement. YORK shall maintain said bond or insurance for a period of two (2) years after the expiration of this Agreement;

(2) Maintain in force an errors and omissions policy, at a limit not less than five million dollars (\$5,000,000) per occurrence and to maintain coverage for a period of at least two (2) years after the expiration of the last contract with PRINCIPAL, or if the errors and omissions coverage is claims-made, YORK agrees that, for said two (2) year period, the "retro" date will not be later than the inception date of this Agreement;

(3) Maintain in force a general liability policy, which names PRINCIPAL as an Additional Insured and which provides limits not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) aggregate and two million dollars (\$2,000,000) products/completed operations aggregate;

(4) Maintain in force a workers' compensation and employers liability policy, which provides coverage to employees of YORK at limits not less than one million dollars (\$1,000,000);

(5) Maintain in force an automobile liability policy, which names PRINCIPAL as an additional insured and which provides a limit of no less than one million dollars (\$1,000,000);

(6) Provide that the aforementioned policies are recognized as "primary and non-contributory" and contain a waiver of subrogation in favor of PRINCIPAL.

J. YORK shall notify PRINCIPAL's insurer of all claims which may affect the program insurance coverage in excess of PRINCIPAL's Self-Insured Retention layer in accordance with the instructions of PRINCIPAL's insurer as provided to YORK pursuant to Section V.(A) of this Agreement. YORK shall also notify PRINCIPAL on any claim which exceeds a Member's Self Insured Limits.

K. Notwithstanding anything to the contrary contained herein, and to the extent applicable, YORK agrees to comply with all obligations imposed upon it by law.

V. DUTIES OF ABAG

- A. ABAG shall promptly provide YORK with such information as YORK may require, including, but not limited to, any copy of documents describing its self-insured GENERAL LIABILITY/ AUTOMOBILE LIABILITY/ PROPERTY program, and all amendments thereto including but not limited to documents submitted to any governmental tribunals for approval of the Program, as well as incident reports and information related thereto in PRINCIPAL'S possession and otherwise cooperate with YORK in carrying out YORK'S tasks hereunder.
- B. Upon receipt of loss notices, primarily MEMBER through ABAG or, in special circumstances ABAG directly, shall promptly assign the loss to YORK.
- C. ABAG shall promptly make funds available for Claim and Loss Adjustment Expense payments with respect to claims referred to YORK and respond to YORK's requests to issue checks in payment of Claims and such checks shall be distributed in accordance with ABAG's Claims processing procedures. Alternatively, ABAG may direct that YORK open and maintain an escrow account to pay Claims and Loss Adjustment Expenses with Funds provided by ABAG as required for that purpose. All bank charges associated with these accounts shall be borne by ABAG.
- D. ABAG shall provide YORK with training material, along with initial and subsequent training on ABAG'S forms and other documents affecting ABAG'S obligations which are provided to YORK and any written

interpretation thereof issued by ABAG or any applicable regulatory body. During the term of this Agreement and at all times that there are open Claims being handled by York, PRINCIPAL, AGAG and MEMBER shall fully cooperate with YORK.

- E. PRINCIPAL covenants and agrees that PRINCIPAL, its employees, agents, including but not limited to ABAG, MEMBERS or independent contractors, will not misuse the information contained within the Claims files. PRINCIPAL further covenants and agrees to maintain the confidentiality of the information contained within the Claims files, as required by applicable State and Federal law and regulations.

VI. SYSTEMS AND DATA PROCESSING

A. Although YORK authorizes PRINCIPAL, ABAG and MEMBERS to use or have access to its Systems in performance of Claims Administration Services enumerated in this Agreement, this does not license YORK's system to PRINCIPAL, ABAG or MEMBERS nor shall PRINCIPAL, ABAG or MEMBERS have, or assert, any property interest whatsoever in the Systems or any improvements or additions YORK makes to its Systems during and/or in the course of YORK's performance under this Agreement, whether or not such improvements or additions were made at the suggestions, request or direction of PRINCIPAL, ABAG or MEMBERS. Notwithstanding the foregoing, the data entered or maintained thereon pursuant to this Agreement is the property of PRINCIPAL.

B. This Agreement grants to PRINCIPAL, ABAG nor MEMBERS no right to possess or reproduce all or any part of the Systems used, owned or controlled by YORK performing all or any part of Claims Administration Services and PRINCIPAL, covenants that it, ABAG and MEMBERS shall not do so.

C. YORK expressly agrees that claim-related data generated and/or maintained in connection with this Agreement or any Exhibit hereto shall be and remain the sole property of PRINCIPAL and YORK shall have no right, title, or interest in such data other than such rights necessary to perform Claim Administration Services upon termination.

VII. COMPENSATION

A. YORK shall be entitled to receive and PRINCIPAL shall be obligated to pay only such fees, allowances, costs, reimbursements, or other compensation as are specified as follows:

PRINCIPAL shall pay YORK the following compensation:

- (i) PRINCIPAL agrees to pay YORK an Administration Fee of \$591,034.00 for the first year fee; \$608,765.00 for the second year fee; and \$627,028.00 for the third year fee; and

(ii) A one-time data conversion fee of \$5,000.00 will be due upon execution;

B. PRINCIPAL shall pay YORK the fees due under VII. A of this Agreement no later than thirty (30) days after PRINCIPAL'S receipt of York's invoice for the conversion fee after execution of the contract and York's quarterly invoices in equal installments for the administration fee. Timely payment is an express condition of York's obligations hereunder.

VIII. AUDIT

A. YORK shall maintain books, records, reports and other documents, in electronic or other format reasonably acceptable to PRINCIPAL relating to its Claims Administration Services performed under this Agreement. All such records and documents pertaining to Claims and the services rendered by York shall be the property of PRINCIPAL and be open for inspection, audit and copying, at PRINCIPAL'S expense, by PRINCIPAL and its agents or their representatives during all regular business hours with reasonable prior notice to YORK. YORK shall cooperate fully with all such agents or other representatives of PRINCIPAL during audits or examinations conducted by PRINCIPAL or its agents.

B. At any time during the Term of this Agreement, or thereafter, provided PRINCIPAL is not in default under this Agreement, PRINCIPAL may conduct, or cause to have conducted, an audit of YORK's operations to determine whether YORK has performed its obligations hereunder in compliance with this Agreement.

C. Audits pursuant to this Section VIII shall be conducted in a manner that does not interfere with YORK'S daily operations. If third party is hired for the audit, a non-disclosure/confidentiality agreement will be signed by third party prior to access. YORK will review audit remarks and be allowed the opportunity to furnish remarks regarding the audit at the time the audit is submitted to PRINCIPAL.

IX. CONFIDENTIALITY

A. Both parties hereto acknowledge and agree that PRINCIPAL'S, ABAG's and Member's information, data and documentation, including but not limited to, non-public and personal information subject to the provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. Subchapter 1, Sections 6801-6809 et. seq., personal health information under the Health Insurance Portability and Accountability Act, 42 U.S.C. 1301, et. seq., and further including, without limitation, all information, data and documentation related to manuals, lists, policyholder information, operating and other systems, business practices and procedures, any information regarding insureds insurance policies, claimants, and Claims, any business, governmental or regulatory matters of

PRINCIPAL, and other information furnished to or obtained by YORK, pursuant to or in connection with this Agreement or in connection with the Services to be rendered, may be confidential ("Confidential Information"). YORK shall not divulge, disclose or use the Confidential Information except for purposes of this Agreement, or as may be expressly agreed in writing by the parties, or as may otherwise be required or directed by applicable law or judicial process. This Section IX shall survive the termination of this Agreement, regardless of the reason for termination.

B. During the Term of this Agreement, and after its termination for any reason, PRINCIPAL shall have the right to request in writing and receive from York either: (i) the immediate return or (ii) confirmation of the immediate destruction of any tangible records, documents, e-mails, computer files, CDs, disks, and any other tangible item that contains, represents, or otherwise includes any Confidential Information of PRINCIPAL. In addition, PRINCIPAL shall have the right, during the Term of this Agreement and after its termination, to request that YORK permanently delete and destroy any Confidential Information contained in any computers, hard drives, servers or other data storage systems of YORK. YORK agrees that PRINCIPAL may seek an injunction by a court of competent jurisdiction enjoining YORK from violating any terms of this Agreement or the confidentiality and non-use provisions of this Section IX. Injunctive relief shall be in addition to any other remedies that PRINCIPAL may have under the law. Notwithstanding the foregoing, YORK may retain a record copy of Claims files and the data therein, for accounting, insurance and similar purposes. YORK shall secure said record copy against improper use or disclosure.

C. YORK acknowledges and agrees that any Confidential Information disclosed to, or acquired by it is disclosed and/or acquired solely for the purposes of facilitating the provision of the services to be rendered by the YORK for and on behalf of PRINCIPAL. YORK shall be solely responsible for informing its employers, officers, and directors of the provisions of the Section and for any acts of its employees, officers or directors that violate the provisions of the Section.

D. Notwithstanding the foregoing, PRINCIPAL agrees that information used for adjusting claims is not subject to statutory or regulatory restrictions against disclosure for that purpose.

X. INDEMNIFICATION

A. YORK agrees to indemnify, defend and hold harmless PRINCIPAL and PRINCIPAL directors, officers, employees, and agents, from and against any and all causes of action, claims, damage, loss, costs and expenses (including, without limitation, fines, damages, liabilities, liens, losses, costs and expenses, including reasonable attorney's fees and litigation expenses) incurred by PRINCIPAL or any of PRINCIPAL directors, officers, attorneys, employees and agents by reason and to the extent of any material breach of this Agreement by YORK, or by reason and to the extent of any negligent, or otherwise wrongful act or omission of YORK or of its officers directors, attorneys, employees or agents.

B. PRINCIPAL agrees to indemnify, defend and hold harmless YORK and its directors, officers, employees and agents from and against any and all causes of action, claim, damage, loss, costs and expenses (including, without limitation, fines, damages, liabilities, liens, losses, costs and expenses, including reasonable attorneys fees and litigation expenses) incurred by YORK and its directors, officers, employees and agents, to the extent such cause of action, claim, damage, loss, cost or expense is not attributable to the negligent or otherwise wrongful act or omission of York.

C. The above defense, indemnification and hold harmless undertakings shall survive the termination of this Agreement.

D. PRINCIPAL acknowledges that YORK has been engaged to provide professional services and that it is not the intent of the parties that YORK assumes any insurance risk. The parties agree that the foregoing defense, indemnification and hold harmless undertakings represent a reasonable allocation of commercial risk between the parties.

XI. BREACH AND TERMINATION

A. If a material breach by either party of this Agreement occurs, the non-breaching party shall identify the breach by delivery of written notice thereof to the breaching party.

B. Upon delivery of written notification of breach, the breaching party shall have a period of fifteen (15) business days or an agreed upon date made within the fifteen (15) business days within which time the breaching party shall cure the breach. Should the breaching party fail to fully cure the breach within the designated time frame, the non-breaching party may terminate this Agreement by delivery of thirty (30) days written notice of termination to the breaching party. Any notice of breach or termination shall be delivered pursuant to Section XIII C hereto.

C. This Agreement may be terminated by a party without the necessity of any notice or right to cure, upon the occurrence of any of the following events:

(1) The expiration of the Term set forth in Section II or any renewal thereof;

(2) The commencement of bankruptcy, insolvency or conservatorship proceedings by the other party, or, if such proceedings are brought against the other party, the other party's failure to have such proceedings dismissed within 45 days.

D. Either party may, without reason, terminate this Agreement with at least sixty (60) days prior written notice to the other party.

XII. EQUITABLE ADJUSTMENT

A. PRINCIPAL shall have the right to direct YORK to perform additional services or to perform services in a specific or different way.

B. This Agreement contemplates that the standards applicable to this Agreement are those in effect on the date of this Agreement, whether such standards are set forth in statutes, regulations, rules, orders, case law or otherwise.

C. In the event of a directive from PRINCIPAL as set forth in Section XII. A or a change in a standard as set forth in Section XII B., YORK shall be entitled to an equitable adjustment in its compensation if such directive or change increases YORK's cost of providing the services YORK renders under this Agreement.

XIII. GENERAL

A. YORK shall not be liable or deemed to be in default for any delay or failure in performance under this Agreement or any Exhibit of this Agreement, or any interruption of Claims Administration Services resulting, directly or indirectly, from acts of God, civil or military authority, or any similar cause beyond the reasonable control of YORK for as long as such condition exists. YORK shall give immediate notice to PRINCIPAL of any delay or failure in performance or of any interruption of Claims Administration Services that has or may occur as soon as YORK becomes aware of such events.

B. If any dispute or claim arises hereunder that the parties are not able to resolve amicably, the parties agree and stipulate that such litigation shall be resolved in the Superior Court in the State of California.

C. All notices which are required to be given or submitted pursuant of this Agreement shall be in writing and shall be transmitted or delivered by certified mail, return receipt requested or by a commercial overnight delivery service to the parties at the addresses set forth below, or to such other addresses as a party may, by notice, specify:

Notices to YORK shall be delivered to:

York Risk Services Group, Inc.
333 City Boulevard West, Suite 1500
Orange, CA 92868

York Risk Services Group, Inc.
99 Cherry Hill Road
Parsippany, New Jersey 07054

Attention: Jody A. Gray, Sr. VP

Attn: Peter Lind, General Counsel, SR.VP

Notices to PRINCIPAL shall be delivered to:

ABAG - Risk Management Officer
101 8TH St.
Oakland, CA 94607
Attention: James Hill, Risk Manager

D. This Agreement and any Exhibit or Schedule made a part hereof constitute the entire Agreement between the parties and supersedes and merges any and all prior discussions, representations, negotiations, correspondence, writing, and other agreements and together states the entire understanding and agreement between PRINCIPAL and YORK with respect to Claims Administration Services to be provided hereunder. Except for unilateral changes made by the PRINCIPAL pursuant to Section XII, for which YORK shall, be entitled to an equitable adjustment in its compensation, this Agreement may be amended or modified only in writing if agreed to and signed by PRINCIPAL and YORK and enforced in all respects, in accordance with the laws of the State of California.

E. No party hereto shall be deemed to have waived any rights or remedies accruing to it hereunder unless such waiver is in writing and signed by such party. No delay or omission by either party hereto in exercising any right shall operate as a waiver of said right on any future occasion. All rights and remedies hereunder shall be cumulative and may be exercised singularly or concurrently.

F. The descriptive headings of this Agreement are intended for reference only and shall not affect the construction or interpretation of this Agreement.

G. Wherever the singular of any term is used herein it shall be deemed to include the plural wherever the plural thereof may be applicable.

H. No party may assign its rights or obligations under this Agreement; provided, however, that YORK may subcontract all or part of the Services required hereunder with PRINCIPAL'S written consent, (which consent shall not be unreasonably delayed or withheld) and may at its discretion delegate to a subsidiary such of its duties as it deems appropriate, provided that such subcontracting or delegation shall not relieve YORK of any of its obligations hereunder.

I. It is expressly understood and agreed that the relationship of YORK to PRINCIPAL shall be that of an independent contractor at all times, and nothing herein shall constitute either the YORK or PRINCIPAL as the partner, agent, or legal representative of the other, for any purpose whatsoever, except to the extent that YORK is the agent of PRINCIPAL for the purpose of adjusting claims. YORK shall have no right or authority to bind or obligate PRINCIPAL with respect to any matter that

is not specifically provided for in this Agreement without the prior approval of PRINCIPAL. All employees or agents of YORK performing duties hereunder for YORK shall be solely and exclusively under the direction and control of YORK and shall not be deemed employees of PRINCIPAL.

J. Nothing in this Agreement is intended to require YORK to engage in the practice of law.

K. PRINCIPAL shall not utilize YORK's trade names, logos, trademarks, service marks or other identification in any press release, advertisement, marketing materials, promotional literature, article, presentation or other type of communication without the prior written consent of YORK, which consent may be withheld or denied in YORK's sole discretion. This provision does not apply to internal communication of PRINCIPAL, ABAG or MEMBER or to communication among any of them regarding York's services under this agreement.

L. PRINCIPAL shall not hire any employee of YORK or induce any employee of YORK to terminate his or her employment (or encourage, and aid or abet any third party to do the same) at any time during which this Agreement or any extension or renewal thereof is in effect and for a period of twelve (12) months thereafter. PRINCIPAL agrees and acknowledges that YORK has invested time and resources in training its personnel and familiarizing them with PRINCIPAL's account and that YORK will suffer harm, the extent of which is difficult to quantify, should PRINCIPAL directly or indirectly cause YORK's employee to terminate their employment with YORK. Therefore, in the event that PRINCIPAL violates this provision, PRINCIPAL shall be liable to YORK for liquidated damages in a sum equal to the employee's salary for two (2) years based on the employee's salary over the two (2) months prior to the termination of that employee's employment with YORK. Notwithstanding the foregoing for purposes of this paragraph "YORK's employee" shall mean an employee of YORK who has adjusted claims of PRINCIPAL pursuant to YORK's work for PRINCIPAL under the Agreement.

IN WITNESS WHEREOF, the parties hereto have read and signed this Agreement as dated below and the Agreement is effective as of August 1, 2014.

YORK RISK SERVICES GROUP, INC. ABAG PLAN Corporation

By: 

Jody A. Gray

Senior Vice President

By: 

James Hill

Risk Manager

Execution Date: July 14, 2014

Execution Date: July 17, 2014

EXHIBIT A. Scope of Work

CLAIMS ADMINISTRATION SERVICES shall also include, but no be limited to, the following services:

1. Providing supervision of the loss adjustment process;
2. Determining and implementing appropriate claims practices to adjust assigned claims in accordance with YORK'S established practices and existing ABAG PLAN claim policy directives, including claim manual, whichever standard is higher, is agreed upon and becomes routinely performed;
3. Adhering to high standards of professional conduct;
4. Adjusting and managing assigned claims to assure that PRINCIPAL and claimants receive high quality service;
5. Establishing, monitoring and timely revisions of case reserves;
6. Settling claims within the applicable coverage terms and conditions;
7. Coordination of Reservation of Rights letters and coverage denials through ABAG.
8. Maintaining current knowledge of applicable adjustment practices and procedures, local practices, applicable insurance coverage, court decisions, current guidelines in the claims function, and Program changes and modifications (as advised by PRINCIPAL);
9. Assisting in the preparation of claims for suit, hearing, trial, or subrogation as appropriate;
10. Acting as MEMBER'S liaison with medical personnel, first notice of loss reporting services and defense counsel;
11. Reviewing bills of service providers;
12. Preparing and submitting status and administrative reports in accordance with YORK'S established practices and existing ABAG PLAN claim policy directives, including claim manual, whichever standard is higher, is agreed upon and becomes routinely performed;
13. Preserving subrogation rights and overseeing subrogation recovery as required.
14. Serve as reporting agent for Medicare/Medicaid and Index Bureau compliance.
15. Attend PLAN Claims Committee meetings and City Council meetings as required
16. Provide periodic (monthly, quarterly and annual) claim reports to ABAG PLAN and member agencies, including deductible billing reports.
17. Provide ABAG PLAN actuary with claim data for actuarial analysis.

ADDENDUM TO EXTEND THE AGREEMENT FOR AN ADDITIONAL PERIOD

This Addendum to Extend the Agreement for an Additional Period (“Addendum”) shall be attached to and made a part of the Agreement for General Liability/Automotive Liability/Property Liability Claims Administration Services (the “Agreement”), effective as of August 1, 2014, between Pooled Liability Assurance Network Joint Powers Authority (“PLAN JPA”), as assignee of ABAG Plan Corporation, and Sedgwick Claims Management Services, Inc. (“Sedgwick”).

In consideration of the Agreement recitals and the mutual covenant and conditions contained herein, the Parties acknowledge that the Agreement is hereby amended as follows:

1. The Agreement shall be extended for an additional period commencing August 1, 2021 and ending July 31, 2026.
2. Effective August 1, 2021, the provisions set forth in Exhibit A of Amendment One shall no longer apply. From and after such date, the provisions set forth in the attached Exhibit A shall apply instead.
3. All terms and conditions of the Agreement shall otherwise remain the same, except those terms and conditions which have been added, deleted, or modified by the parties in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed on the dates shown below.

Pooled Liability Assurance Network
Joint Powers Authority

Sedgwick Claims Management Services, Inc.

By _____

By _____

Title _____

Title _____

Date _____

Date _____

EXHIBIT A

Claims Services

We will provide claims handling at the following rates:

Annual Fee

Line of Business	08/01/2021 through 07/31/2022	08/01/2022 through 07/31/2023	08/01/2023 through 07/31/2024	08/01/2024 through 07/31/2025	08/01/2025 through 07/31/2026
General Liability	\$726,897.00	\$748,704.00	\$771,165.00	\$794,300.00	\$818,129.00

Annual Fee: Our Annual Fee quotation is a guaranteed flat annual fee and applies to claims administration services provided during the 12-month contract term. If there is a significant increase in claims volume, we may propose additional charges. The request shall include appropriate supporting documentation for the requested amounts as applicable for the contract based on increased claims volume, a projection the duration of such increase in volume, and whether the increase in volume will extend to any remaining years of the Contract. If client agrees to such additional charges, the fees will be adjusted accordingly. If client does not agree to such charges, the parties shall use good faith efforts to adjust the charges to an agreed amount.

Services of the Account Executive, along with phone claim reviews, are provided at no additional charge.

General Fees, Services, Terms and Conditions

- Outside Activity/Field Investigations will be billed at time and expense.
- MMSEA Reporting: \$9.50 per claim.
- During the term of a multi-year contract, except for items for which pricing for each year is explicitly listed above, pricing for each year after the first full year will increase by the greater of 3% or the percentage increase as reported by the U.S. Department of Labor - Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>) for the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average, All Items, covering the prior twelve-month period, valued as of the month ending two months prior (to allow time for reports to be published) to the anniversary date of the contract. For all contracts, pricing at the end of the contract term and each year thereafter will increase by such amount, provided that (i) both parties agree and enter into a renewal contract, or (ii) the parties continue with the existing contract on a month-to-month basis.
- Billing: we will issue an electronic invoice monthly, via email. Payments shall be due and payable no later than thirty days from the invoice date.
- Pricing has been developed based on provided loss data. In the event that the loss data is erroneous or otherwise incorrect both parties agree to discuss an equitable adjustment of service fees.
- PLAN JPA may request that the services we perform be rendered in a particular or different way or additional services be provided, and we will make all reasonable efforts to comply. If such request

increases our cost of providing the services, we shall be entitled to an equitable adjustment in compensation commensurate with the increase in cost.

- Subrogation: Our fee per feature pricing includes placing parties that it deems responsible on notice. Pursuit of subrogation beyond this point can be performed at 25% of recovery (exclusive of attorney fees and expenses related to litigation as well as expenses, such as locate searches, skip traces, cost and origin reports, copy service, etc. or any agreed upon contingency fees).
- Claims and Allocated Loss Adjustment Expenses (ALAE) may be handled in two ways:
 - PLAN JPA may elect to fund an account established and maintained by us. In this case, PLAN JPA will maintain and provide timely replenishment of funds to pay all Claims and ALAE and to avoid penalties and late payments. We will electronically provide a monthly recap of all deposits as well as Claims and ALAE payments. PLAN JPA will be responsible for bank fees with respect to the account.
 - PLAN JPA may elect to maintain and fund a client-owned account from which we will issue all Claim and ALAE payments. In this case, PLAN JPA will provide us with the facsimile signature of an officer, director, partner or employee of PLAN JPA to print digitally on the checks. PLAN JPA will be responsible for bank fees with respect to the account.

Allocated Loss Adjustment Expenses

We will arrange for various services and other costs as agent for our client. These costs are referred to as Allocated Loss Adjustment Expenses (ALAE). A list of these expenses follows. Payment of ALAE is the responsibility of PLAN JPA. Our fees do not cover ALAE, and we are under no obligation to pay ALAE with our own funds.

- Fees of outside counsel for claims in suit, coverage opinions and litigation and for representation at hearings or pretrial conferences
- Fees of court reporters
- All court costs, court fees and court expenses
- Fees for service of process
- Costs of undercover operatives and detectives
- Costs for employing experts for the preparation of maps, professional photographs, accounting, chemical or physical analysis, diagrams
- Costs for employing experts for the advice, opinions or testimony concerning claims under investigation or in litigation or for which a declaratory judgment is sought
- Costs for independent medical examination or evaluation for rehabilitation
- Costs of legal transcripts of testimony taken at coroner's inquests, criminal or civil proceeding
- Costs for copies of any public records or medical records
- Costs of depositions and court reported or recorded statements
- Costs and expenses of subrogation
- Costs of engineers, handwriting experts or any other type of expert used in the preparation of litigation or used on a one-time basis to resolve disputes
- Witness fees and travel expenses
- Costs of photographers and photocopy services
- Costs of appraisal fees and expenses (not included in flat fee or performed by others)
- Costs of indexing claimants
- FROI/SROI Submission

- Services performed outside of our normal geographical regions
- Costs of outside investigation, signed or recorded statements
- Out of the ordinary expenses incurred in connection with an individual claim or requiring meeting with Customer
- Any other extraordinary services performed by us at Customer's request
- Investigation of possible fraud including SIU services and related expenses
- Any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss or to the protection or perfection of the subrogation rights of Customer.

We may, but need not, elect to utilize affiliated entities to perform any of these services. Such fees and costs will be charged as ALAE.

IT/RMIS Fees:

(Services outlined below are only billed if utilized)

Service	Description	Fee
RMIS	RMIS Licensing (Includes loading of 10 years of closed claims history, if requested, and all open claims, regardless of age)	<i>Ten (10) Licenses Included</i>
Additional RMIS Claims Storage	Closed claim data, greater than 10 years old will be stored <i>at the client's request</i> and subject to additional fee as noted.	\$0.15 per Claim per Year
Custom Software Development	Any software development, including, but not limited to: creating system features; creating data extracts; creating interfaces	\$185 per Hour
Data Onboarding	Loading data from a claim system into our claim system	\$10,000 per Engagement (Additional T&E hours may be applied for especially complex onboard. Cost to be determined at time of analysis.)
Data Services	Any technical services including, but not limited to: data updates; data analysis; one-time data feeds	\$185 per Hour
Manual Data Manipulation	Updating data that cannot be accomplished programmatically (See Data Services). Examples include: Updating coding such as NCCI and ISO; Retrospective updates to a custom field	\$50 per Hour
Annual Maintenance of Data Feed	Maintaining data feed	\$5,000 per Year
Standard Data Feeds to Third Parties	Our Data feed in our Standard format	\$1,500 per feed

Note: In the event the outgoing TPA presents charges for the preparation and transmission of their data to us, those costs will be categorized as a pass through to the client.

August 26, 2021

Agenda Items 6. B.

CLAIMS MATTERS

SUBJECT: Consideration of Settlement Authority for Property Claims

BACKGROUND AND HISTORY:

PLAN JPA Property 2021-22 coverage includes all buildings, structures, vehicles, personal property, data processing equipment, contractors' equipment, extra expenses, data processing extra expenses, valuable papers, records, fine arts, business interruption, transit, and errors and omissions. The limits of liability include \$1,000,000,000 per occurrence and subject to policy exclusions. The deductibles include \$5,000 for members for all property and vehicles, and \$500,000 for PLAN JPA. Auto Physical Damage (APD) is slightly different in that the member deductible is \$5,000; PLAN JPA's deductible is \$100,000.

The Master Program Document (MPD) for Property does not identify settlement authority for Litigation Management and Sedgwick's Third Party Adjusters. Staff requests Litigation Management be authorized to settle claims up to \$200,000 and adjusters be authorized to settle claims for \$50,000 over a member's deductible. Litigation Management would seek authority from the Claims Committee for claims above their authority.

STAFF RECOMMENDATION:

Staff recommends the Claims Committee provide settlement authority for property claims as follows: Litigation Management \$200,000 and Sedgwick Third Party Adjusters \$50,000 in excess of PLAN JPA member's deductible.

REFERENCE MATERIALS ATTACHED:

- Property Master Program Document

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS
AUTHORITY

MASTER PROGRAM DOCUMENT
FOR THE
POOLED PROPERTY PROGRAM

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY

MASTER PROGRAM DOCUMENT
FOR THE
POOLED LIABILITY PROGRAM

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POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY
(PLAN JPA)

MASTER PROGRAM DOCUMENT (MPD)
FOR THE
POOLED PROPERTY PROGRAM (PPP)

ARTICLE I: DEFINITIONS

The following definitions apply to this MPD:

1. **Administrator** shall mean the person responsible for the daily administration, management, and operation of the **Authority's** programs as defined in the Bylaws.
2. **Authority** shall mean the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA).
3. **Board** shall mean the Board of Directors of the PLAN JPA.
4. **Deductible** shall mean the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the **Participant** before the **Authority** is obligated to make any payment from the pooled funds.
5. **Deposit Premium** shall mean that amount to be paid by each **Participant** for each **program year** as determined by the **Board** in accordance with Article III, Section C of this MPD.
6. **Joint Powers Agreement** shall mean the agreement made by and among the public entities listed in Appendix A (**Member Entities**) of the **Joint Powers Agreement**, hereafter referred to as **Agreement**.
7. **Limit of Coverage** shall mean the amount of coverage stated in the Declarations or certificate of coverage, or sublimits as stated therein or in the Memorandum of Coverage (MOC) for each **Participant** or **covered party** per **occurrence**, subject to any lower sublimit stated in the MOC.
8. **Participant** shall mean a **Member Entity**, which shall mean a signatory to the **Agreement** establishing the PLAN JPA, who has elected to participate in the PPP.
9. **Program Year** shall mean that period of time commencing at 12:01 a.m. on July 1 and ending at 12:00 a.m. on the following July 1.
10. **Retained Limit** shall mean the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the **Participant** before the **Authority** is obligated to make any payment from the pooled funds.

11. **Self-Insured Retention (SIR)** shall mean the **Authority's limit of coverage** above **Participant's retained limits** and up to the attachment point for excess coverage.
12. **Third Party Administrator (TPA)** shall mean the claims administrator for the **Authority** for the PPP.

ARTICLE II: GENERAL

A. AUTHORITY

1. The Pooled Property Program (PPP) Master Program Document (MPD) is one of the **Authority's** governing documents. However, any conflict between the PPP MPD, the **Authority's Agreement**, the Bylaws, or the PPP MOC shall be determined in favor of the **Agreement**, the Bylaws, or the MOC, in that order.
2. The PPP MPD is intended to be the primary source of information, contain the rules and regulations, and serve as the operational guide for the conduct of the PPP.
3. The PPP has been organized under authority granted by, and shall be conducted in accordance with, the laws of the State of California.

B. PURPOSE

The primary purpose in establishing a PPP is to create a method for providing coverage for protection against damage to the **Participants** real and personal property, including mobile equipment as provided in the MOC.

C. RESPONSIBILITY

1. The **Board** shall have the responsibility for establishing policies and remaining informed as to the financial strength and viability of the PPP. The **Board** has the authority, within the parameters of the **Agreement** and Bylaws of the **Authority** and this MPD, to act as needed to maintain and develop the financial strength of the PPP. The **Board** shall have the authority to enter into insurance contracts for the insurance coverages within the budgeted costs of such insurance.
2. The Executive Committee shall have the responsibility and authority to affect the general policies established by the **Board**.
3. The **Administrator** shall have the responsibility to manage the daily activities of the PPP and shall be given the authority to implement the policies established by the **Board**. The **Administrator** shall report to the Executive Committee and to the **Board**, as necessary.

ARTICLE III: PROGRAM ELEMENTS

A. PROGRAM YEARS

1. Each **program year** shall be accounted for and the funds maintained separately from any other program of the **Authority**. The income and expenses of each **program year** shall be accounted for separately from any other **program year's** income or expenses.
2. Any excess funds at the end of the **program year** shall be retained by the PPP to pay claims and expenses which may be incurred in the future.

B. LIMITS OF LIABILITY

The **Board** shall annually establish the limit of liability for the PPP which may be amended from time to time for subsequent **program years**. This limit of liability shall apply to each real and/or personal property claim as described in the MOC for this PPP.

C. DEDUCTIBLES

1. The PPP shall provide **deductibles** of \$5,000 for all property, and \$5,000 for all vehicles per occurrence.
2. The amount of each loss, including expenses, which is less than the **deductible**, shall be paid by the **Participant**.

D. DEPOSIT PREMIUMS

1. The **Administrator**, in conjunction with an actuary, shall establish rates and **deposit premiums**, subject to **Board** approval, adequate to fund the actuarially determined losses in the pooled layer of the PPP, including the cost of excess coverage, flood premiums and the projected administrative costs of the PPP.
2. The annual **deposit premium** for each **Participant** shall be calculated by applying the **Participant's** most recent Total Insured Values (TIV) to 1) the funding level as determined by the actuary and recommended by the **Administrator**, 2) the cost of any excess coverage and flood premiums, and 3) a charge for the administrative and claims servicing expenses of the PPP as determined by the **Administrator**.

E. DIVIDEND AND ASSESSMENTS

1. DIVIDENDS

- (a). At the end of each **fiscal year**, a dividend calculation shall be performed for all open **program years**. Each year thereafter there shall be an

additional dividend calculation made until such time as the **program year** is closed. Any dividends available to be declared and returned to the **Participants**, who are in good standing under the PLAN JPA and in compliance with their obligations under the PPP, will be at the discretion of the **Board** provided that the total dividend to be distributed from all qualifying **program years** shall not reduce the total equity for all **program years** below a discounted 90% confidence level.

(b). Calculation

- i. Dividends may not be declared from a **program year** until five years after the end of that **program year**.
- ii. Dividends may be declared only at such time as the PPP has equity, with liabilities actuarially stated discounted at a 90% confidence level. The calculated amount shall represent the maximum dividend available to be declared.
- iii. The dividend shall be reduced if any of the five succeeding years (after the five years eligible for dividend calculation) have negative equity, with liabilities actuarially stated at a discounted 90% confidence level.
- iv. Dividends may only be declared if the equity at the expected confidence level is five times the Self Insured Retention.

2. ASSESSMENTS

- (a). Assessments may be levied on the **Participants** for the risk sharing layer of any **program year(s)**, as approved by the **Board**, at such time as an actuary finds that the assets of the PPP, as a whole, do not meet the expected discounted losses of the PPP. Each **Participant's** share of the assessment shall be allocated based upon the **deposit premiums** collected for the self-insured layer of each respective **program year** being assessed. If such assessment is not sufficient to relieve the pool of its actuarially determined deficit in the year of the assessment, such assessment shall be levied each subsequent year until the actuarially determined deficit is relieved. The timing of payment shall be determined by the **Board** at the time of assessment.
- (b). Equity from the risk sharing layer may be exchanged between eligible **program years** if sufficient funds are available. The transfer of equity will be performed so that the individual **Participant's** share of equity is separately applied so as to maintain the integrity of each **Participant's** balance.

F. EXCESS COVERAGE

1. The **Board** shall ensure that each **program year** is provided with excess property coverage for the **Participants**. It is the intent and purpose of the **Authority** to continue to provide such coverage to the **Participants**, provided that such coverage can be obtained and is not unreasonably priced. This coverage may be obtained from an insurance company, by participating in another pool established under the Government Code as a joint powers authority, or offered through another PPP pooling procedure. If the coverage is purchased from an insurance company, such insurance company shall have an A.M. Best Rating Classification of A or better and an A.M. Best Financial Rating of VII or better or their equivalents.
2. Premiums for such coverage shall be paid by the PPP from the proceeds received as **deposit premiums** from the **Participants**.
3. The **Board** may, from time to time, alter excess coverage based on insurance market conditions, available alternatives, costs, and other factors. The **Board** shall place excess coverage with the two competing objectives of security and minimizing costs to the PPP as a whole.

ARTICLE IV: ADMINISTRATION

A. BOARD

1. Discussion of developments and performance of the PPP may occur as part of any scheduled **Board** meeting.
2. The **Board** shall have the responsibility and authority to carry out and perform all functions and make all decisions affecting the PPP, consistent with the powers of the **Authority** and not in conflict with the **Agreement**, the Bylaws, or the MOC.

B. EXECUTIVE COMMITTEE

1. The Executive Committee shall have the responsibility and authority to carry out and perform all other functions and make all other decisions affecting the PPP, provided that such functions and decision are consistent with the powers of the **Authority** and are not in conflict with the **Agreement**, the Bylaws, or the MOC.
2. The Executive Committee shall meet at least twice a year to review the developments and performance of this PPP. The Executive Committee shall review, study, advise, make recommendations to the **Board**, or take any action which the Committee believes to be in the best interests of the PPP and its **Participants**, provided that such action is not prohibited by law or is not an action reserved unto the **Board**.

C. ADMINISTRATOR

The **Administrator** shall be responsible for:

1. The overall operation of the PPP;
2. Monitoring the status of the PPP and its operations, the development of losses, the program's administrative and operational costs, service companies' performance, and brokers' performance;
3. Assisting the **Board** in selecting brokers, actuaries, auditors, and other service companies;
4. Promoting the programs to prospective new participants;
5. Preparing, distributing, and maintaining all records of the PPP, including its MPD and MOC as these may be amended from time to time; and
6. Preparing Certificates of Coverage as may be required by the **Participants** in the PPP.

ARTICLE V: CLAIMS ADMINISTRATION

A. DISPUTES REGARDING MANAGEMENT OF A CLAIM

1. Any matter in dispute between a **Participant** and the **Third Party Administrator** shall be called to the attention of the **Administrator** and heard by the Executive Committee whose decision may be appealed to the **Board** within thirty (30) days of the Committee's decision. If no appeal is filed, the decision of the Executive Committee shall be final.
2. When an appeal has been filed, the **Board** shall meet within forty-five (45) days to hear the appeal. The decision of the **Board** will be final.

ARTICLE VI: PARTICIPATION

A. ELIGIBILITY AND APPLICATION

1. ELIGIBILITY

- (a). A new applicant must commit to at least three full **program years** of participation in this PPP.

- (b). Any **Member Entity** may apply to participate in the PPP by providing an adopted resolution of its governing body and such other information/materials as may be required. The applicant's resolution shall commit the applicant to three full **program years** of participation in the PPP, if accepted, and consent to be governed for property coverage in accordance with the MPD, the MOC and other documents and policies adopted by the **Board**.
- (c). The application for participation shall be submitted at least thirty (30) days prior to the date of the last **Board** meeting of the **program year** to ensure the **Board** has adequate time to review and evaluate the acceptability of the applicant. It is recommended that an applicant only enter the PPP at the commencement of a new **program year**. If an applicant chooses to enter the PPP at any other time, the **deposit premium** for the remainder of the **program year** will be pro-rated. The new **Participant** will begin coverage on the date that is mutually acceptable to the new **Participant** and the **Board**; however, the new **Participant** will be required to share losses with the other **Participants** of the PPP for the entire **program year**.

2. APPROVAL OF APPLICATION

The **Board** shall, after reviewing the resolution and other underwriting criteria, determine the acceptability of the exposures presented by the applicant and shall advise the applicant in writing of its decision to accept or reject the request within ten (10) days after the decision has been made.

B. PARTICIPANTS' DUTIES

1. The **Participants** shall be responsible for providing the data required by the **Authority** to determine the values of covered properties. The data shall be factual and provided in a timely manner in conformance with the policies adopted by the **Board**.
2. The **Participants** shall disclose activities not usual and customary in their operation.
3. The **Participants** shall at all times cooperate with the **Authority's Administrator**, Litigation Manager, **Third Party Administrator**, with regard to claims handling and underwriting activities of the **Authority**.
4. Each year the **Authority** shall bill **Participants** for a **deposit premium** for the next **program year**. The billings shall be due and payable in accordance with the Bylaws.
5. Billings may be made to **Participants** for a **program year** found to be actuarially unsound. All billings for payments to bring a **program year** into an actuarially

sound condition are due and payable upon receipt.

6. Former **Participants** in the PPP shall be required to pay all applicable billings for the **program years** in which they participated. Delinquent billings, together with penalties and interest, shall be charged and collected from the **Participant** in accordance with the Bylaws.
7. Penalties and interest shall be charged against any amounts delinquent in accordance with the Bylaws.

C. TERMINATION

1. VOLUNTARY TERMINATION

(a). A **Participant** shall not be permitted to withdraw from the PPP prior to the end of its commitment period of three full **program years**, and shall be obligated for payment of premiums for these three years.

(b). A **Participant** which has maintained its participation in the PPP for three full **program years** may terminate its participation if, at least six months before the next **program year**, a written request to terminate participation is received from the **Participant**.

(c). Any **Participant** seeking to terminate its participation without proper and timely notice shall be responsible for the full cost of the next **program year's** premium. The notice will be deemed effective for the **program year** following the year in which the additional premium is paid.

2. INVOLUNTARY TERMINATION

(a) The **Board** may initiate termination of a **Participant** from the PPP for the following reasons:

- (i) Termination as a **Member Entity** of the **Authority**;
- (ii) Declination to cover the **Participant** by the entity providing excess coverage;
- (iii) Nonpayment of premiums, assessments, or other charges;
- (iv) Frequent late payment of premiums, assessments, and/or other charges, subject to interest and penalty charges;
- (v) Failure to timely provide requested underwriting information;
- (vi) Consistent poor loss history relative to the pool;

- (vii) Substantial change in exposures which are not acceptable in this PPP; and/or
- (viii) Financial impairment that is likely to jeopardize this PPP's ability to collect amounts due in the future.

The Board's determination of the existence of any of these conditions shall be final.

- (b) The **Board** shall have the authority, upon a two-thirds approval, to authorize a termination notice be sent to a **Participant**. Such notice shall be sent at least 60 days prior to the effective date of termination.

3. CONTINUED LIABILITY UPON TERMINATION

Termination of participation, whether voluntary or involuntary, in future **program years** does not relieve the terminated **Participant** of any benefits or obligations of those **program years** in which it participated. These obligations include payment of assessments, retrospective adjustments, or any other amounts due and payable.

ARTICLE VII: TERMINATION AND DISSOLUTION OF THE PPP

The PPP may be terminated and dissolved any time by a vote of two-thirds of the **Participants**. However, the PPP shall continue to exist for the purpose of disposing of all claims, distributing assets, and all other functions necessary to conclude the affairs of the PPP.

Upon termination of the PPP, all assets of the PPP shall be distributed only among the **Participants**, including any of those which previously withdrew pursuant to Article VI, in accordance with and proportionate to their **deposit premiums** and assessments paid during the term of participation. The **Board** shall determine such distribution within six months after the last pending claim or loss covered by the PPP has been finally resolved and there is a reasonable expectation that no new claims will be filed.

ARTICLE VIII: AMENDMENTS

This MPD may be amended by a two-thirds (2/3rds) vote of the **Participants** present and voting at the meeting, provided prior written notice, as provided within the **Agreement**, has been given to the **Board**.

Appendix A

City of American Canyon	Town of Los Gatos
Town of Atherton	City of Millbrae
City of Benicia	City of Milpitas
City of Burlingame	City of Morgan Hill
City of Campbell	City of Newark
Town of Colma	City of Pacifica
City of Cupertino	Town of Portola Valley
City of Dublin	Town of Ross
City of East Palo Alto	City of San Bruno
City of Foster City	City of San Carlos
City of Half Moon Bay	City of Saratoga
Town of Hillsborough	City of South San Francisco
Town of Los Altos Hills	City of Suisun City
Town of Tiburon	Town of Woodside

August 26, 2021

Agenda Items 6. C.

CLAIMS MATTERS

SUBJECT: Consideration of Sedgwick Liability Nurse Consultation Program

BACKGROUND AND HISTORY:

PLAN JPA utilizes experts to defend and evaluate claimant's alleged injuries with respect to its general liability claims. Experts can add a heavy cost to the defense of cases. The Liability Nurse Consultation (LCN) Program is another resource that can be utilized to help reduce the cost of experts and provide insight into claims. The LCN handles claims referred to them by examiners including, but not limited to, bodily injury, auto claims and trip and falls. Services can be engaged for questions of causation, unclear and unverified diagnoses, pre-existing conditions and/or comorbidities, medical elements, high incident of claims, treatments inconsistent with diagnosis, extended treatment, claims with high specials, and treatment referrals. Upon referral, the Sedgwick nurse consultant will provide a report to the examiner via a secure delivery system.

Litigation Management will confirm whether the program is included in the existing contract with Sedgwick Third Party Administrator or if there is an additional charge for this service before the Claims Committee meeting.

STAFF RECOMMENDATION:

Staff recommends Claims Committee authorize an internal referral basis as a claim-claim referral operation under the existing Sedgwick liability Third Party Administrator contract.

REFERENCE MATERIALS ATTACHED:

- Liability Nurse Consultation Workflow
- Liability Nurse Referral Form 2021

Liability Nurse Consultation Program

Q: What is the Liability Nurse Consultation Program?

A: A specialized team of nurses reviewing general liability, bodily injury and auto claims.

Q: What types of claims do they handle?

A: Types of matters that are often referred by claims examiners include:

- Bodily injury auto claims
- Retail slips, trips and falls: in store, parking lot, etc.
- Trucking and delivery company collision accidents involving bodily injury
- Alleged food contamination/food poisoning claims; foreign object in food; foodborne illness, etc.
- Bus and transportation company incidents: patrons falling on buses due to allegations of operator error, mechanical malfunctions, etc.
- Emergency medical transport company claims relating to transport injuries
- Hospitality industry claims: guest room or public space slips, trips and falls, injury due to equipment failures with elevators, escalators, gyms or pool equipment, etc.
- Higher education/university claims: slip, trips and falls on premise, dormitory, cafeteria incidents, etc.

Q: When should their services be engaged?

A: Referral triggers may include:

- Questions of causal link between injury and treatment
- Unclear or unverified diagnosis
- Claimant has a history of injuries, pre-existing conditions and/or co-morbidities
- Medical elements that are not well defined
- High incident of claims from a particular attorney
- Treatment that is inconsistent with diagnosis
- Extensive treatment, multiple modalities or protracted periods of time in treatment
- Claims with high medical specials
- Treatment referrals that are made by the claimant attorney to a medical provider

Liability Nurse Consultation Program Workflow

1. Complete LNC referral form and email to: liabilityRNconsultants@sedgwick.com
2. Within 24 to 48 hours of the request, a Sedgwick nurse consultant will be assigned to the matter and via email, send an acknowledgement letter to the claim's examiner.
3. The assigned Sedgwick nurse consultant and referring examiner will collaborate to determine the best method to transmit the medical records to the nurse for review (i.e. email, Teams, Dropbox.com or CD sent via secure delivery services (FedEx/USPS) with tracking capabilities).
4. Upon completion of the assignment, the report is sent via email to the examiner.
5. A billing invoice is prepared by the finance department and is emailed to examiner and team lead.
6. The examiner is to pay the invoice from the file by manually creating a check and mailing to the address on the billing invoice.

Liability Nurse Consultation Program Contacts

Diana Shick RN, LNC | Manager, Liability Nurse Consultant Program
DIRECT 440.774.3256 | EMAIL: diana.shick@sedgwick.com

Sandra Liles, RN | Director, Professional Liability Nurse Consultants
DIRECT 864-322-0122 | EMAIL: sandra.liles@sedgwick.com

Michael Brendel | Assistant Vice President-Specialty Claims
DIRECT 631-768-1132 | EMAIL: michael.brendel@sedgwick.com

LiabilityRNConsultants@sedgwick.com

Liability Nurse Consultation Program Referral Form

Claimant Name: Click here to enter text.

Claim Number: Click here to enter text.

Referral Date: Click here to enter text.

Date of Incident: Click here to enter text.

Claims Examiner: Click here to enter text.

Client: Click here to enter text.

Nurse Memorandum (Tier I): a brief memo to address only specific question(s) of the examiner within 20 business days of the referral.

Standard Review (Tier II):

Tier II A - full medical review with analysis within 20 business days of the referral.

Tier II B - full medical review with analysis, providing the examiner a captioned report to include a medical billing summary identifying related and unrelated billing within 20 business days of the referral.

Reasons for referral:

- Causal relationship issues
- Unclear or unverified diagnosis
- Questionable unrelated treatment
- Questionable pre-existing conditions and/or co-morbidities
- Over-utilization of medical treatment/Treatment outside guidelines
- Research of unusual medical diagnosis or treatment
- Other (specify) _____

Comments/Additional Instructions: Click here to enter text.

Liability Nurse Consultation Program Workflow

1. Complete Referral Form and email to: liabilityRNconsultants@sedgwick.com
2. Within 24 to 48 hours of the request, a Sedgwick Nurse Consultant will be assigned to the matter and via email will acknowledge the referral to the claims examiner.
3. The assigned Sedgwick Nurse Consultant and referring examiner shall collaborate to determine the best method to transmit medical records to the nurse for review [i.e. SIR, email, Teams, dropbox.com or CD sent via secure delivery services [FedEx/USPS] with tracking capabilities].
4. Upon completion of the assignment, the report is sent via email to the examiner.
5. A billing invoice is prepared by the finance department and is emailed to examiner and team lead.
6. Upon receipt, the examiner is to pay the invoice from the file by manually creating a check and mailing to the address on the billing invoice.